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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 JAMES HENRY ANDERSON,) Case No. 1:21-cv-01451-SAB (PC)
12 Plaintiff,)
13 v.) ORDER DISCHARGING ORDER TO SHOW
14 DR. OLGA BEREHOVSKAYA,) CAUSE
15 Defendant.) (ECF No. 5)
16)
17)

18 Plaintiff James Henry Anderson is proceeding *pro se* and *in forma pauperis* in this civil rights
19 action pursuant to 42 U.S.C. § 1983.

20 Plaintiff filed the instant action on September 29, 2021.

21 On September 30, 2021, the Court issued an order to show cause why the action should not be
22 dismissed, without prejudice, for failure to exhaust the administrative remedies. (ECF No. 5.)

23 After receiving an extension of time, Plaintiff filed a response on November 17, 2021. (ECF
24 No. 8.) In his response, Plaintiff contends that he was denied access to the law library on several
25 different occasions and when he was able to file an inmate appeal he received no response. (*Id.*)
26 Plaintiff's failure to exhaust remedies is no longer clear on the face of the complaint and therefore, the
27 court shall not resolve this issue at this stage of the proceedings. *Albino v. Baca*, 747 F.3d 1162, 1169
28 (9th Cir. 2014) (en banc) (where failure to exhaust is clear from face of complaint, case is subject to

1 dismissal for failure to state a claim under Rule 12(b)(6)); Wyatt v. Terhune, 315 F.3d 1108, 1120 (9th
2 Cir. 2003) (“A prisoner's concession to nonexhaustion is a valid ground for dismissal...”)(overruled
3 on other grounds by Albino, 747 F.3d at 1168-69). Accordingly, the Court's order to show cause,
4 issued on September 30, 2021, shall be discharged.

5 Based on the foregoing, IT IS HEREBY ORDERED that:

- 6 1. The Court's order to show cause, issued on September 30, 2021, is DISCHARGED;
7 and
- 8 2. The Court shall screen Plaintiff's complaint in due course.

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10 IT IS SO ORDERED.

11 Dated: November 18, 2021


UNITED STATES MAGISTRATE JUDGE